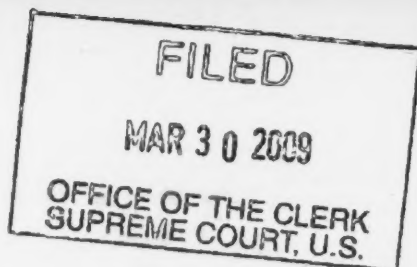


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No. 08-991



***IN THE
SUPREME COURT of the UNITED STATES***

**FRANKIE WHITE and LEON WARNER,
Individually and on Behalf of All Others
Similarly Situated,
Petitioners**

vs.

**THE COCA COLA COMPANY,
Respondent**

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Eleventh Circuit**

**PETITIONERS' REPLY TO BRIEF IN
OPPOSITION**

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Attorney for Petitioners

In regards to the first question presented for review (the conflict of interest issue), Petitioners' counsel strongly disagree with Respondent's claims (i) that there is an intra-circuit conflict in the Eleventh Circuit and (ii) that the issue would benefit from further percolation.

The 11th Circuit pre and post *Glenn v. Metropolitan Life Insurance Company* __U.S. __, 128 S. Ct. 2343 (2008) has always taken the position that periodic contributions to an irrevocable trust eliminates a conflict of interest. See *Buckley v. Metro. Life Ins. Co.*, 115 F. 3d 936, 939 (11th Cir., 1997), *Turner v. Delta Family-Care Disability and Survivorship Plan*, 291 F. 3d 1270, 1273 (11th Cir., 2002), *Gilley v. Monsanto*, 490 F.3d 848 (11th Cir., 2007), and *Townsend v. Delta Family-Care Disability and Survivorship Plan*, 295 Fed. Appx. 971 (11th Cir., 2008).

The 11th Circuit in its remand of *Oliver v. The Coca-Cola Company*, 546 F.3d 1353 (11th Cir., 2008) recognized that *White v. The Coca-Cola Company*, 542 F.3d 848 (11th Cir., 2008) would be controlling precedent. Thus, the remaining issues (and prompting remand) in *Oliver* is not, as respondent suggests, evidence of an intra-circuit split.

Respondent also suggests that the other circuit courts should have an opportunity to address the conflict issue, especially since *Met Life v. Glenn* was decided less than a year ago. However, the 11th Circuit in *White* indicated that "*Glenn* does not alter

our analysis unless [the Committee] operated under a conflict of interest." *White* at 854.

Petitioners respectfully suggest not only are the circuit courts split but the circuit courts are split three ways. The 9th Circuit believes there is always some type of conflict when benefits are paid from a trust that is periodically funded. The 11th Circuit believes there is no conflict. The 3rd Circuit believes there is no conflict so long as the contributions are fixed as to amount and date of payment. Even if the other circuits weigh in on the matter, those circuits will choose either the 3rd, 9th or 11th Circuit views.

Petitioners respectfully suggest that in light of the extraordinary importance of this particular issue to so many litigants throughout the country, the views of the Solicitor General should be requested.

Respectfully submitted,

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